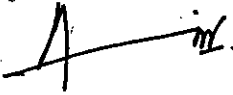


FORM OF ORDER SHEET

Court of _____

Appeal No. 1477/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	17/07/2023	The appeal of Mr. Tariq Muhammad presented today by Mr. Noor Muhammad Khattak Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on _____
		By the order of Chairman  REGISTRAR

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

APPEAL NO. 1477 /2023

TARIQ MUHAMMAD

VS

GOVT. OF KP & OTHERS

INDEX

S. NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Memo of Appeal with affidavit	1 - 3
2.	Copy of the order dated 18.02.2016	A	4
3.	Copy of the NOC	B	5
4.	Copy of the appointment dated 01.07.2020	C	6 - 7
5.	Copies of the application, relieving order and LPC	D	8 - 11
6.	Copies of application, departmental appeal and appellate order dated 26.06.2023	E	12 - 13
7.	Vakalatnama	14

APPELLANT

THROUGH:


**NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

APPEAL NO. 1477 /2023

Mr. Tariq Muhammad, Village Secretary (BPS-07),
VC Spin Kani, Kalan, District Nowshera.....**APPELLANT**

VERSUS

- 1- The Director General Local Government & Rural Development Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Assistant Director Local Government & Rural Development, District Nowshera.
- 3- The District Education Officer (Male), District Nowshera.

.....**RESPONDENTS**

APPEAL UNDER SECTION- 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974
AGAINST THE APPELLATE ORDER DATED 26.06.2023
WHEREBY THE DEPARTMENTAL APPEAL/
REPRESENTATION FOR RETENTION OF LIEN WAS
REJECTED WITH NO PLAUSABLE REASONS

PRAYER:

That on acceptance of this appeal the impugned order dated 26.06.2023 may kindly be set aside and the appellant be allowed to rejoin his previous post of Village Secretary in the respondent Department with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

Brief facts giving rise to the present appeal are as under:-

- 1- That appellant was initially appointed as Village Secretary (BPS-07) in VC Spin Kani, Kalan District Nowshera vide order dated 18.02.2016. Copy of the order dated 18.02.2016 is attached as annexure.....**A.**
- 2- That during service the education department advertised different posts including the post of PST (BPS-12) for which the appellant secured No Objection Certificate from the respondent department on 29.05.2019. Copy of the NOC is attached as annexure.....**B.**

-2-

3- That after going through the selection process the appellant was appointed as PST vide order dated 01.07.2020. Copy of the appointment dated 01.07.2020 is attached as annexureC.

4- That the appellant applied to the competent authority for relieving him on lien to join the post of PST on 06.07.2020 and the competent authority vide office order dated 07.07.2020 relieved the appellant w.e.f. 01.07.2020. That the LPC was also issued to the appellant on 29.07.2020. Copies of the application, relieving order and LPC are attached as annexureD.

5- That before the completion of lien period the appellant submitted an application before the respondents for rejoining his previous post but no response was given, feeling aggrieved from which the appellant preferred departmental appeal/ representation on 16.06.2023 which was rejected vide appellate order dated 26.06.2023. Copies of application, departmental appeal and appellate order dated 26.06.2023 are attached as annexureE.

6- That appellant feeling aggrieved and having no other remedy filed the instant service appeal on the following grounds amongst the others.

GROUND:

A- That the impugned appellate order dated 26.06.2023 whereby rejecting the departmental appeal for retention of his lien is against the law, facts, norms of natural justice and material on the record hence not tenable and liable to be set aside.

B- That appellant has not been treated by the respondent department in accordance with law and rules on the subject noted above and as such the respondent violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.

C- That the appellant was properly relieved from his post to join PST and has the right to retain his previous post i.e. Village Secretary in light of the Fundamental Rule-14(A) he, entitled to be allowed to rejoin his previous post.

D- That it is pertinent to mention here that on similar point this Honorable tribunal had passed a number of judgments.

E- That lien on a post is the legal right of an individual in service and for that reasons the appellant had submitted an application/ request for lien and even otherwise Fundamental Rule-14(A) protect this right of the appellant if he had not been confirmed on the subsequent post.

F- That the inaction of the respondents by not allowing the appellant to rejoin his previous post/ service is against Article 4 of and also is the violation of the Article 38(e) of the constitution of the Islamic republic of Pakistan, 1973.

G- That the appellant seeks permission to advance other grounds and proofs at the time of hearing.

APPELLANT

THROUGH:

NOOR MUHAMMAD KHATTAK

Me
KAMRAN KHAN

Ayub
MUHAMMAD AYUB

Waleed
WALEED ADNAN

M. Jan
**MEHMOOD JAN
ADVOCATES**

AFFIDAVIT:

I, Mr. Tariq Muhammad, Village Secretary (BPS-07), VC Spin Kani, Kalan, District Nowshera do hereby on oath that the contents of this Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.

DEPONENT




Office of the
Assistant Director,
Local Govt. & Rural Dev. Department,
Nowshera.

No. 141120 /AD(LG&RDD)/NSR/2016
1872 /AD(LG&RDD), 2016

OFFICE ORDER.

Having been cleared/recommended by the District Selection / Recruitment Committee in its meeting held on 21-1-2016 and age relaxed by the Secretary to Government of Khyber Pakhtunkhwa, Establishment & Administration Department (Establishment Wing) Peshawar vide order No. SOE-III(E&AD)-2-5/2015 dated 15-2-2016 for 25 days 05 months and 03 years, the competent authority has been pleased to appoint Mr. Tariq Muhammad s/o Yar Muhammad r/o Spin Kani Kalan Tehsil and District Nowshera as Secretary BPS-07 (7490-415-19940) in Village Council Spin Kani Kalan District Nowshera purely on temporary basis with all usual allowances admissible under the rules with immediate effect on the following terms and conditions:-


1. Your services shall be governed under the Khyber Pakhtunkhwa Civil Servants Act 1973 and the laws/rules made there-under applicable to a Civil Servants.
2. You shall be on probation for a period of one year which shall be extendable for further period of one year and if no notification is issued at the end of extended period of probation, the probation period shall deem to be extended for another period of one year.
3. Your appointment is liable to be terminated at any time without assigning any reason before the expiry of the probation/extended period of probation if your performance during this period is not found satisfactory.
4. Your retention in service shall be subject to verification of your domicile and other academic documents/testimonials from the concerned authorities / offices.
5. In case you wish to resign at any time, fourteen days notice shall be necessary or in lieu thereof fourteen days your pay shall be forfeited.


Assistant Director,
Local Govt. & Rural Dev. Deptt.
Nowshera.

Endst. No. & date even.

Copy forwarded for information to:-

1. The Director General, LG&RDD, Govt. of Khyber Pakhtunkhwa, Peshawar.
2. The District Nazim, Nowshera.
3. The Deputy Commissioner, Nowshera.
4. The District Accounts Officer, Nowshera.
5. The Medical Superintendent, DHQ Hospital, Nowshera.
6. The Tehsil Municipal Officer, Nowshera.
7. The Supervisor, AD LG&RDD Office, Nowshera for necessary action.
8. The Office Assistant, AD LG&RDD Office, Nowshera for necessary action.
9. Mr. Tariq Muhammad s/o Yar Muhammad r/o Spin Kani Kalan Tehsil and District Nowshera with direction that if the above terms and conditions are acceptable to you, you are directed to submit your medical fitness certificate from DHQ Hospital, Nowshera and arrival report to the office of undersigned within fifteen days positively after the issuance of this appointment order otherwise your appointment order will stand cancel / withdrawn.
10. Office copy.


Assistant Director,
Local Govt. & Rural Dev. Deptt.
Nowshera.

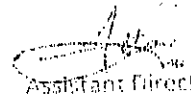
"B" (4)

-5-

NO OBJECTION CERTIFICATE (NOC)

It is certified that Mr Tariq Muhammad S/O Yâr Muhammad
CNIC# 17201-5737135-9 Secretary Village Council (RPS-09) in this Department applied for the
post of PST, DM, SST (Science/General) and CT in education Department Nowshera.

This Department has no objection on his appointment as PST, DM, SST
(Science/General) and CT in Education Department Nowshera.


Assistant Director
Local Govt: & Rural Dev: Department
Nowshera
25/5/2023

Legible Copy

**Office of the
Assistant Director
Local Government & Rural Development Department,
Nowshera**

NO OBJECTION CERTIFICATE (NOC)

It is certified that Mr. Tariq Muhammad S/o Yar Muhammad CNIC No.17201-5737135-9 Secretary Village Council (BPS-09) in this Department applied for the post of PST, DM, SST (Science/General) and CT in education Department Nowshera.

The Department has no objection on his appointment as PST, DM, SST (Science/General) and CT In Education Department Nowshera.

Sd/-
Assistant Director
Local Govt. Dev. Department
Nowshera

"C"

PST OVERAGE APPOINTMENT ORDER ENDNST: NO.2215-24 DATED: 01-07-2020



OFFICE OF THE
DISTRICT EDUCATION OFFICER (MALE)
NOWSHERA

-6-

(Office Phone#0923-9220228, Fax#0923-9220228)

APPOINTMENT ORDER:

Consequent upon the recommendations of the Departmental Selection Committee and Age relaxation from the competent authority Vide Notification Endst: No. SOE-III(E&AD)2-4/2019 Dated: 29/06/2020, appointment of the following (10) male candidates are hereby ordered against the post of Primary School Teachers (PSTs) School based in BPS-12 (Rs.13320-960-42120) @ Rs. 13320/- fixed plus usual allowances as admissible under the Rules on Adhoc basis on Contract under the existing policy of the Provincial Government, in Teaching Cadre on the terms and condition given below in the interest of public service with effect from the date of their taking over charge.

SR	NAME	FATHER NAME	DATE OF BIRTH	NIC	TOTAL MARKS	CANDIDAT E UC	SCHOOL NAME
1.	MUHAMMAD YOUNAS AHMAD KHAN	AMEER AHMAD KHAN	04-04-1982	1720122241729	107.939	NOWSHERA CANTT	GPS AC CENTRE
2.	TARIQ MUHAMMAD	YAR MUHAMMAD	12-01-1982	1720157371359	110.771	PAHARI KATTI KHEL	GPS MERA SPIN KANA KALAN
3.	ZAFAR ALI	MINHAJ GUL	10-04-1981	1720148663159	120.868	ZIARAT KAKA SAHIB	GPS SHAHAB KHEL
4.	SAJF UR REHMAN	QAZI FASIH UD DIN	15-03-1982	1720182343405	131.371	KABUL RIVER	GPS KABAL RIVER
5.	FAZLEMAULA	FAZLE RABBI	08-01-1980	1720142650885	113.668	RASHAKAI	GPS NO.2 RASHAKAI
6.	BAHAR ALI	MURAD ALI	12-06-1980	1720186602657	126.835	KHANSHER GARHI	GPS NO.2 KHUDREZI
7.	ZABIH ULLAH JAN	ABDUL SATTAR	03-04-1981	1720122554655	123.129	DAG BEHSUD	GPS DAG BEHSUD
8.	FAYAZ AKHTER	GUL MUST KHAN	30-09-1980	1720121641493	118.868	SPIN KHAK	GPS NO.3 SPIN KHAK
9.	HASEEB ULLAH	UBAID ULLAH	07-04-1982	1720192773531	114.42	SPIN KHAK	GPS AFRIDO GARHI

TERMS & CONDITIONS

1. Appointment is purely on temporary & contract basis initially for one year w.e.f July 01, 2020 to June 30, 2021.
2. They shall be governed by such rules and regulations as may be issued from time to time by the Govt.
3. Their services shall be terminated at any time, in case their performance is found unsatisfactory during their contract period. In case of misconduct, they shall be proceeded under the rules framed from time to time.
4. Their appointments are made on School based, they shall have to serve at the place of their posting, and their services are not transferable to any other station.
5. Charge reports should be submitted to all concerned in duplicate.
6. They should not be handed over charge if exceed, 35 years or below 18 years of age. Age relaxation case may be submitted to competent authority.
7. Appointment is subject to the condition that the certificate/documents must be verified from the concerned authorities by the DEO (M) Nowshera, and if anyone found to have produced bogus Certificate/Degree/Testimonials shall be reported to the law enforcing agencies for further action.
8. Their services are liable to be termination on one month's notice from either side. In case of resignation without prior notice his one-month pay/allowances shall be forfeited in favour of the Government.
9. The Pay of any appointee shall not be drawn /released by the DAO/DDO concerned until and unless a certificate to the effect by DEO (M) Nowshera is issued that their/his certificates/degrees/transcripts have been verified.
10. They should join their post within 15 days after issuance of this notification. In case of failure to join the post within 15 days, his appointment shall expire automatically and no subsequent appeal etc. shall be entertained.
11. Health and Age Certificate should be produced from the Medical Superintendent concerned before taking over charge.

-7-

PST OVERTAGE APPOINTMENT ORDER ENDNST: NO.2215-24 DATED: 01-07-2020

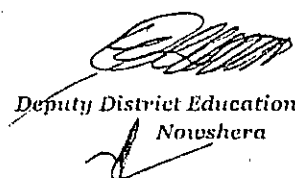
12. NO TA/DA etc. is allowed for joining their posts.
13. Before handing over charge once again their documents must be checked and if they do not possess the required relevant qualifications as per rules/policy or they do not belong to the district, where they have been appointed in, they shall not be handed over charge of the post.
14. If any moribund candidate is deprived of appointment by this order, the appointment order of the lowest candidate in merit shall be withdrawn on acceptance of the appeal and adjustment order will be reviewed accordingly as per merit.
15. In case of regularization their inter-se seniority shall be determined on the basis of their merit position and the date of taking over charge shall not affect their inter-se seniority.
16. Posting/adjustment on the advertised/available vacancies is the discretionary powers of the appointing authority and no one has the right to claim for adjustment at a specific school.
17. Their Seniority will remain intact as per order issued vide this office Endst: No. 921-934/DEO (M)/NSR/Estab: Pry/PST Adhoc/Apptt: Dated Nowshera the : 28/05/2020 but no financial back benefit will be entertained.
18. They will receive nine months in service Mandatory professional training arranged by PITE/RITE.
19. Errors and omission will be accepted for further rectification within the specified period.

(Sajjad Akhtar Iqbal)
District Education Officer (M)
Nowshera

Endst: No. 2215-24/DEO (M)/NSR/Estab Pry/PST Adhoc/Apptt: Dated Nowshera the: 01/07/2020.

Copy forwarded for information and necessary action to the: -

1. PA to the Director E&SE Khyber Pakhtunkhwa, Peshawar.
2. PA to Deputy Commissioner Nowshera.
3. Senior District Accounts Officer Nowshera.
4. DY: District Education Officer Nowshera.
5. District Monitoring Officer (IMU) E & SE Nowshera.
6. Sub Divisional Education Officer (M) Concerned.
7. ASDEO (M) Circle Concerned.
8. Supt; (M) Estab; Local office
9. Officials Concerned.
10. M/File


Deputy District Education Officer (M)
Nowshera

To

The Assistant Director,
LG&RDD Nowshera.

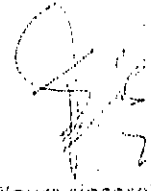
-8- "D"

Subject: Relieving with lien from the post of SVC

R/Sir

1. with due respect I have been serving as SVC spin kana kalan since 18-02-2016 to 01-07-2020 and additional charge of VC Sheikhi from 15-06-2020 to 01-07-2020
2. I had applied through proper channel for the post of PST (BPS-12) in elementary & secondary education under advertisement No INF(P)2265/19 (copy attached)
3. Test & interview have been conducted in the light of that advertisement and luckily I have been selected for the post of PST (BPS-12) under endsr: No 2215-24 dated 01-07-2020. (copy attached)
4. I have been obtained NOC for the said post. (copy attached)
5. My probation period against the post of SVC has been terminated.

In the light of the above pattern kindly relieve me with lien w.e.f 01-07-2020 A.M.
If lien under the rules not covered I may please be relieved properly without lien.



Yours sincerely,
Tariq Muhammad
Secretary village council LG&RDD

Copy to

3. The DEO(M) Nowshera.
4. The Head Master GPS Mera spin kana kalan

Received
Asyeeb
6-7-2020

D.N
(585)



-9-

**Office Of The
Assistant Director
Local Government & Rural Development Department
Nowshera**

Dated Nowshera: 07/07/2020

OFFICE ORDER

No. 374 AD/RDD/NSR/2020 : The Competent Authority is pleased to relieve Mr. Tariq Muhammad S/O Yar Muhammad Secretary Village Council (BPS-09) Spln Kana Kalan District Nowshera w.e.f. July 01, 2020. after noon due to his appointment on the post of Primary School Teacher (PST) BPS-12 in the Elementary & Secondary Education Department Khyber Pakhtunkhwa on the recommendation of the Departmental Selection Committee District Education Office Nowshera. Appointment Order No. 2215-24 Dated 01-07-2020.

Assistant Director
Local Govt: & Rural Dev: Department
Nowshera

Endst: No & Date Even.

Copy forwarded to the

1. District Education Officer (M) Nowshera
2. SDEO (M) Circle Nowshera.
3. ASDEO (M) Circle Nowshera
4. District Accounts Officer Nowshera
5. Mr. Tariq Muhammad
6. M/File


Assistant Director
Local Govt: & Rural Dev: Department
Nowshera

LAST PAY CERTIFICATE

1. Last pay certificate of TARIQ MUHAMMAD
of the Local Government and Rural Development Department District Nowshera
Proceeding to Relieving
2. He has been paid up to 01/07 2020 (1st July 2020)
as the following rates: --

Sr #	Particulars	Rates
1	0001 Basic pay	14690/=
2	1000 House Rent Allowances	1719/=
3	1210 Convey Allowances	1932/=
4	1300 Medical Allowances	1500/=
5	2148 15% Adhoc Relief All-2013	588/=
6	2199 Adhoc Relief Allow @ 10 %	187/=
7	2211 Adhoc Relief All 2016 10 %	973/=
8	2224 Adhoc Relief All 2017 10 %	1469/=
9	2247 Adhoc Relief All 2018 10 %	1469/=
10	2264 Adhoc Relief All 2019 10 %	1469/=
Gross Pay		25996/=
1	3009 GPF subscription	1140/=
2	3501 Benevolent Fund	600/=
3	4004 R. Benefits & Death comp	690/=
Total Deduction		3430/=
NET PAY		23566/=

3. He made over charge of the office of Local Govt & Rural Dev: Department Nowshera
on the After Noon of 01/07/2020
4. Recoveries are to be made from the party of Government servant as detailed on the reverse.
5. He has been paid leave salary as detailed below. Deduction have been made as noted on the reverse.
- From _____ to _____ at Rs _____ a month
- From _____ to _____ at Rs _____ a month
- From _____ to _____ at Rs _____ a month
6. He is entitled to draw the following: --
7. He is entitled to joining time for _____ days.
8. The detail to the income tax recovered from him up to the date from the beginning of the Current year are noted on the reverse.


Signature _____ Assistant Director
G. D. D. Nowshera
Designation Assistant Director

Dated at 29 / 07 / 2020

11-



Details of Recoveries

Name of recovery: Salary of the of Month of July & August 2020

Amount Rs 47132/= (Forty seven thousands one Hundred thirty-Two Rupees only)

To be recovered in has been Deposited In Government treasury in one Instalments.

Deduction made from leave salary

From to on amount of Rs.

From to on amount of Rs.

From to on amount of Rs.

Name of months	pay	Gratuity Fee etc.	Fund and other deduction	Amount of Income -Tax recovered	Remarks
July 2020					
August 2020					
September 2020					
October 2020					
November 2020					
December 2020					
January 2020					
February 2020					
March 2020					
April 2020					
May 2020					
June 2020					

To

The Director General,
Local Government & Rural Development Department,
Khyber Pakhtunkhwa Peshawar.

'E'

-12-

Subject: REQUEST FOR RETENTION OF LIEN AGAINST THE POST OF VILLAGE SECRETARY

Respected Sir,

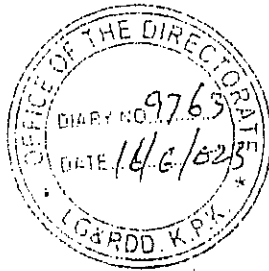
With humble submission, it is stated that while working as Secretary Village Council Spin Kana Kalan in the Office of the Assistant Director, LG&RDD Nowshera, the post of PST were advertised by the Education Department District Nowshera. The applicant applied for the post of PST through proper channel, forwarded to the District Education Officer (Male) District Nowshera by Office of the Assistant Director, LG&RDD Nowshera dated 29.05.2019 (copy attached).

2. Pertinent to mention here that my date of entry into service in LG&RDD as Secretary Village Council Spin Kana Kalan in the Office of the Assistant Director, LG&RDD Nowshera is 18.02.2016 (copy attached), and there was 04 years, 04 months and 14-days service in my credit, when I applied for the post of PST in Education Department. I also requested for retention of lien against the post of Secretary Village Council in the Office of the Assistant Director, LG&RDD Nowshera in accordance with the lien policy of the Provincial Government in vogue. The applicant was properly relieved and joined the Education Department as PST on 02.07.2020, but the Office of the Assistant Director, LG&RDD Nowshera did not retain my lien against the post of Secretary Village Council in the Office of the Assistant Director, LG&RDD Nowshera which is my legal rights

3. The above in view, it is requested that the concerned Office may kindly be directed to retain my lien against the post of Secretary Village Council in the Office of the Assistant Director, LG&RDD Nowshera as per policy of the Provincial Government in vogue, so that my legal rights are protected accordingly.

Thanks.

Yours Sincerely,



(Tariq Muhammad)

(Ex-Secretary Village Council Spin Kana Kalan)
(O/o the Assistant Director, LG&RDD Nowshera)

Now PST GPS Mira Spin Kana Kalan Education
Department Nowshera



DIRECTORATE GENERAL - 13 - ^{0/19}
LOCAL GOVERNMENT & RURAL DEVELOPMENT
DEPARTMENT KHYBER PAKHTUNKHWA

No. Director(LG)3-1/Establishment/2022-23/1125-28
Dated Peshawar the, 26th June, 2023

To.

Mr. Tariq Muhammad
(Ex-Village Secretary)
District Nowshera.

Subject:

REQUEST FOR RETENTION OF LIEN AGAINST THE POST OF
VILLAGE SECRETARY.

I am directed to refer to your application No. Nil dated Nil on the subject cited above and to state that as per instruction of Establishment Department, lien can be granted to a civil servant who has been confirmed after successful completion of his probation period and is appointed to another regular post under Provincial Government or Federal Government. In the instant case you were appointed on contract basis and hence not entitled for retention of lien.

ASSISTANT DIRECTOR (ADMIN/HR)
LG&RD

Endst: No. & date even:

Copy forwarded to the:

1. Assistant Director (Senior), LG & RDD, Tehsil Headquarter District Nowshera.
2. PS to Minister, LG,E & RDD, Khyber Pakhtunkhwa.
3. PA to Director General, LG & RDD, Khyber Pakhtunkhwa.

ASSISTANT DIRECTOR (ADMIN/HR)
LG&RD

VAKALATNAMA
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

APPEAL NO: _____ OF 2023

Tariq Muhammad

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

L. Gout & others.

(RESPONDENT)
(DEFENDANT)

I/We Appellant

Do hereby appoint and constitute **Noor Mohammad Khattak Advocate Supreme Court** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.


Dated. ____/____/2022


CLIENT

ACCEPTED

NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

(BC-10-0853)


(15401-0705985-5)
KAMRAN KHAN


UMAR FAROOQ MOHMAND


WALEED ADNAN

&


MUHAMMAD AYUB
ADVOCATES

OFFICE:

Flat No. (TF) 291-292 3rd Floor,
Deans Trade Centre, Peshawar Cantt.
(0311-9314232)